

SHB 1194 - S AMD 279

By Senator Kline

NOT CONSIDERED 05/25/2011

1

2 On page 1, line 1 of the title, after "Relating to" strike the  
3 remainder of the title and insert "bail; amending RCW 10.19.090,  
4 10.19.100, 10.19.160, 18.185.010, 18.185.040, 18.185.070, and  
5 18.185.110; amending 2010 c 254 s 2 (uncodified); and adding new  
6 sections to chapter 10.19 RCW."

7

8 On page 1, beginning on line 9, strike everything through line 10  
9 and insert "**Sec. 2.** RCW 10.19.090 and 1986 c 322 s 2 are each amended  
10 to read as follows:

11 In criminal cases where a recognizance for the appearance of any  
12 person, either as a witness or to appear and answer, shall have been  
13 taken and a default entered, the recognizance shall be declared  
14 forfeited by the court, and at the time of adjudging such forfeiture  
15 said court shall enter judgment against the principal and sureties  
16 named in such recognizance for the sum therein mentioned, and  
17 execution may issue thereon the same as upon other judgments. If the  
18 surety is not notified by the court in writing of the unexplained  
19 failure of the defendant to appear within (~~thirty~~) fourteen calendar  
20 days of the date for appearance, then the forfeiture shall be null and  
21 void and the recognizance exonerated.

22

23 **Sec. 3.** RCW 10.19.100 and 1891 c 28 s 86 are each amended to read  
24 as follows:

25 The parties, or either of them, against whom such judgment may be  
26 entered in the superior or supreme courts, may stay said execution for  
27 sixty days from the date of the notification by the court by giving a

1 bond with two or more sureties, to be approved by the clerk,  
2 conditioned for the payment of such judgment at the expiration of  
3 sixty days, unless the same shall be vacated before the expiration of  
4 that time.

5  
6 **Sec. 4.** RCW 10.19.160 and 1986 c 322 s 5 are each amended to read  
7 as follows:

8 (1) The surety on the bond may return a person to custody ((a person))  
9 for good cause in a criminal case under the surety's bond if the  
10 surrender is accompanied by a notice of forfeiture or a notarized  
11 affidavit specifying the reasons for the surrender. If, upon motion  
12 by a party to the bail transaction, a court determines that good cause  
13 does not exist for the surety to surrender a person, the surety shall  
14 return the premium paid by, or on behalf of, the person, as well as  
15 any recovery fee. Good cause for surrender includes, but is not  
16 limited to, a substantial increase in the likelihood of the risk of  
17 flight, violation of a court order, failure to appear, or the  
18 concealment or intentional misrepresentation of information by the  
19 person, provided that good cause does not include failure to make  
20 timely payments to the surety for the bond premium. The surrender  
21 shall be made to the ((facility in which the person was originally  
22 held in custody or the)) county or city jail affiliated with the court  
23 issuing the warrant resulting in bail.

24 (2) A violation of this section amounts to unprofessional conduct  
25 under RCW 18.185.110.

26  
27 NEW SECTION. **Sec. 5.** The presiding judge of a court shall notify  
28 the administrative office of the courts when the court revokes or  
29 reinstates the justification or certification of a bail bond agent to  
30 post bonds in the court. The notice to the administrative office of  
31 the courts must include the reasons for the revocation or  
32 reinstatement. Upon receiving the notification, the administrative  
33 office of the courts shall notify superior courts and courts of  
34 limited jurisdiction statewide. No civil liability may be imposed by

1 any court on the administrative office of the courts or its employees  
2 under this section except upon proof of bad faith or willful or wanton  
3 misconduct or gross negligence.

4  
5 **Sec. 6.** RCW 18.185.010 and 2004 c 186 s 2 are each amended to  
6 read as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 (1) "Department" means the department of licensing.

10 (2) "Director" means the director of licensing.

11 (3) "Commission" means the criminal justice training commission.

12 (4) "Collateral or security" means property of any kind given as  
13 security to obtain a bail bond.

14 (5) "Bail bond agency" means a business that sells and issues  
15 corporate surety bail bonds or that provides security in the form of  
16 personal or real property to ensure the appearance of a criminal  
17 defendant before the courts of this state or the United States.

18 (6) "Qualified agent" means an owner, sole proprietor, partner,  
19 manager, officer, or chief operating officer of a corporation who  
20 meets the requirements set forth in this chapter for obtaining a bail  
21 bond agency license.

22 (7) "Bail bond agent" means a person who is employed by a bail  
23 bond agency and engages in the sale or issuance of bail bonds, but  
24 does not mean a clerical, secretarial, or other support person who  
25 does not participate in the sale or issuance of bail bonds.

26 (8) "Licensee" means a bail bond agency, a bail bond agent, a  
27 qualified agent, or a bail bond recovery agent.

28 (9) "Branch office" means any office physically separated from the  
29 principal place of business of the licensee from which the licensee or  
30 an employee or agent of the licensee conducts any activity meeting the  
31 criteria of a bail bond agency.

32 (10) "Bail bond recovery agent" means a person who is under  
33 contract with a bail bond agent to receive compensation, reward, or  
34 any other form of lawful consideration for locating, apprehending, and

1 surrendering a fugitive criminal defendant for whom a bail bond has  
2 been posted. "Bail bond recovery agent" does not include a general  
3 authority Washington peace officer or a limited authority Washington  
4 peace officer.

5 ~~(11) ("Contract" means a written agreement between a bail bond  
6 agent or qualified agent and a bail bond recovery agent for the  
7 purpose of locating, apprehending, and surrendering a fugitive  
8 criminal defendant in exchange for lawful consideration.~~

9 ~~—(12))~~ "Planned forced entry" means a premeditated forcible entry  
10 into a dwelling, building, or other structure without the occupant's  
11 knowledge or consent for the purpose of apprehending a fugitive  
12 criminal defendant subject to a bail bond. "Planned forced entry"  
13 does not include situations where, during an imminent or actual chase  
14 or pursuit of a fleeing fugitive criminal defendant, or during a  
15 casual or unintended encounter with the fugitive, the bail bond  
16 recovery agent forcibly enters into a dwelling, building, or other  
17 structure without advanced planning.

18 (12) "Property bond" means a bail bond executed for compensation the  
19 security for which is real property, tangible personal property, or  
20 other assets.

21 (13) "Property bond agency" means a bail bond agency that issues  
22 property bonds.

23 (14) "Surety bond" means a bail bond that is guaranteed by an  
24 insurance company that has been qualified to transact surety insurance  
25 business in Washington state by the insurance commissioner.

26 (15) "Surety bond agency" means a bail bond agency that issues  
27 only surety bonds.

28  
29 **Sec. 7.** RCW 18.185.040 and 2004 c 186 s 4 are each amended to  
30 read as follows:

31 (1) Applications for licenses required under this chapter shall be  
32 filed with the director on a form provided by the director. The  
33 director may require any information and documentation that reasonably  
34

1 relates to the need to determine whether the applicant meets the  
2 criteria, including fingerprints.

3 (2) Applicants for licensure or endorsement as a bail bond agent  
4 or a bail bond recovery agent must complete a records check through  
5 the Washington state patrol criminal identification system and through  
6 the federal bureau of investigation at the applicant's expense. Such  
7 record check shall include a fingerprint check using a Washington  
8 state patrol approved fingerprint card. The Washington state patrol  
9 shall forward the fingerprints of applicants to the federal bureau of  
10 investigation for a national criminal history records check. The  
11 director may accept proof of a recent national crime information  
12 center/III criminal background report or any national or interstate  
13 criminal background report in addition to fingerprints to accelerate  
14 the licensing and endorsement process. The director is authorized to  
15 periodically perform a background investigation of licensees to  
16 identify criminal convictions subsequent to the renewal of a license  
17 or endorsement.

18

19 **Sec. 8.** RCW 18.185.070 and 1993 c 260 s 8 are each amended to  
20 read as follows:

21 (1) No bail bond agency license may be issued under the provisions  
22 of this chapter unless the qualified agent files with the director a  
23 bond, executed by a surety company authorized to do business in this  
24 state, in the sum of ten thousand dollars for a surety agency and one  
25 hundred thousand dollars for a property bond agency conditioned to  
26 recover against the agency and its servants, officers, agents, and  
27 employees by reason of its violation of the provisions of RCW  
28 18.185.100. The bond shall be made payable to the state of  
29 Washington, and anyone so injured by the agency or its servants,  
30 officers, agents, or employees may bring suit upon the bond in any  
31 county in which jurisdiction over the licensee may be obtained. The  
32 suit must be brought not later than two years after the failure to  
33 return property in accordance with RCW 18.185.100. If valid claims  
34 against the bond exceed the amount of the bond or deposit, each

1 claimant shall be entitled only to a pro rata amount, based on the  
2 amount of the claim as it is valid against the bond, without regard to  
3 the date of filing of any claim or action.

4 (2) Every licensed bail bond agency must at all times maintain on  
5 file with the director the bond required by this section in full force  
6 and effect. Upon failure by a licensee to do so, the director shall  
7 suspend the licensee's license and shall not reinstate the license  
8 until this requirement is met.

9 (3) In lieu of posting a bond, a qualified surety agent may  
10 deposit ten thousand dollars in an interest-bearing account(~~(,—ten)~~)  
11 and a qualified property bond agent may deposit one hundred thousand  
12 dollars in an interest-bearing account.

13 (4) The director may waive the bond requirements of this section,  
14 in his or her discretion, pursuant to adopted rules.

15  
16 **Sec. 9.** RCW 18.185.110 and 2008 c 105 s 4 are each amended to  
17 read as follows:

18 In addition to the unprofessional conduct described in RCW  
19 18.235.130, the following conduct, acts, or conditions constitute  
20 unprofessional conduct:

21 (1) Violating any of the provisions of this chapter or the rules  
22 adopted under this chapter;

23 (2) Failing to meet the qualifications set forth in RCW  
24 18.185.020, 18.185.030, and 18.185.250;

25 (3) Knowingly committing, or being a party to, any material fraud,  
26 misrepresentation, concealment, conspiracy, collusion, trick, scheme,  
27 or device whereby any other person lawfully relies upon the word,  
28 representation, or conduct of the licensee. However, this subsection  
29 (3) does not prevent a bail bond recovery agent from using any pretext  
30 to locate or apprehend a fugitive criminal defendant or gain any  
31 information regarding the fugitive;

32 (4) Assigning or transferring any license issued pursuant to the  
33 provisions of this chapter, except as provided in RCW 18.185.030 or  
34 18.185.250;

1 (5) Conversion of any money or contract, deed, note, mortgage, or  
2 other evidence of title, to his or her own use or to the use of his or  
3 her principal or of any other person, when delivered to him or her in  
4 trust or on condition, in violation of the trust or before the  
5 happening of the condition; and failure to return any money or  
6 contract, deed, note, mortgage, or other evidence of title within  
7 thirty days after the owner is entitled to possession, and makes  
8 demand for possession, shall be prima facie evidence of conversion;

9 (6) Entering into a contract, including a general power of  
10 attorney, with a person that gives the bail bond agent full authority  
11 over the person's finances, assets, real property, or personal  
12 property;

13 (7) Failing to keep records, maintain a trust account, or return  
14 collateral or security, as required by RCW 18.185.100;

15 ~~((7))~~ (8) Any conduct in a bail bond transaction which  
16 demonstrates bad faith, dishonesty, or untrustworthiness;

17 ~~((8))~~ (9) Violation of an order to cease and desist that is  
18 issued by the director under chapter 18.235 RCW;

19 ~~((9))~~ (10) Wearing, displaying, holding, or using badges not  
20 approved by the department;

21 ~~((10))~~ (11) Making any statement that would reasonably cause  
22 another person to believe that the bail bond recovery agent is a sworn  
23 peace officer;

24 ~~((11))~~ (12) Failing to carry a copy of the contract or to  
25 present a copy of the contract as required under RCW 18.185.270(1);

26 ~~((12))~~ (13) Using the services of an unlicensed bail bond  
27 recovery agent or using the services of a bail bond recovery agent  
28 without issuing the proper contract;

29 ~~((13))~~ (14) Misrepresenting or knowingly making a material  
30 misstatement or omission in the application for a license;

31 ~~((14))~~ (15) Using the services of a person performing the  
32 functions of a bail bond recovery agent who has not been licensed by  
33 the department as required by this chapter;

34

1       (~~(15)~~) (16) Performing the functions of a bail bond recovery  
2 agent without being both (a) licensed under this chapter or supervised  
3 by a licensed bail bond recovery agent under RCW 18.185.290; and (b)  
4 under contract with a bail bond agent;

5       (~~(16)~~) (17) Performing the functions of a bail bond recovery  
6 agent without exercising due care to protect the safety of persons  
7 other than the defendant and the property of persons other than the  
8 defendant; (~~or~~

9 ~~—(17)~~) (18) Using a dog in the apprehension of a fugitive criminal  
10 defendant;

11 (19) Surrendering a person without good cause pursuant to RCW  
12 10.19.160; or

13 (20) Failing to reasonably disclose, when requested by law  
14 enforcement, information within the bail agent's possession concerning  
15 the location of a fugitive criminal defendant.

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17       NEW SECTION.   **Sec. 10.**   Sections 1 and 5 of this act are each  
18 added to chapter 10.19 RCW."

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20  
21       Renumber the remaining sections consecutively and correct any  
22 internal references accordingly.

23

EFFECT:   Amends the title of the bill to An Act Relating to  
Bail.

Requires courts to notify sureties of a defendant's failure to  
appear within 14 calendar days of the date on which the defendant  
failed to appear, rather than 30 days.

Specifies that the parties can stay the execution of the judgment  
for 60 days from the date of the notification by the court which  
provides a concrete starting date.

Allows a surety to surrender a client in a criminal case for good  
cause and if accompanied by a notice of forfeiture or a notarized  
affidavit specifying the reasons for surrender. If the court finds  
that good cause does not exist for the surrender the surety must

return the premium paid as well as any recovery fee. Good cause does not include circumstances in which the client failed to make timely payment to the surety for the bond premium. A violation of this section is unprofessional conduct.

Requires the presiding judge of a court to notify AOC when the court revokes the justification or certification of a bail bond agent to post bonds in the court. This notice must include the reasons for revocation. Once AOC receives the information it must notify superior courts and courts of limited jurisdiction statewide.

Provides definitions for property and surety bonds and property and surety bond agencies.

Requires bail bond agent applicants to complete a records/background check through WSP and the FBI.

Requires surety agencies to file a bond with DOL, or deposit into a trust account, \$10,000. Property bond agencies must file a bond with DOL, or deposit into a trust account, \$100,000.

Provides that it is considered unprofessional conduct for a bail bond agent to enter into a contract, including a general power of attorney, with a person that gives the bail bond agent full authority over the person's finances, assets, real property, or personal property. Failing to reasonably disclose, when requested by law enforcement, information within the bail agent's possession concerning the location of a fugitive criminal defendant is also unprofessional conduct.

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